TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 232.

THE UNITED STATES, APPELLANT,

vs.

WILL J. ALLEN.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 26, 1922.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 232.

THE UNITED STATES, APPELLANT,

vs.

WILL J. ALLEN.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
General traverse	4	3
Argument and submission of case	4	3
Findings of fact and conclusion of law	5	3
Opinion of the court by Hay, J.	7	6
Dissenting opinion by Graham, J.	9	9
Judgment of the court	12	12
Proceedings after entry of judgment	12	12
Defendant's application for appeal	12	12
Allowance of appeal	12	12
Clerk's certificate	13	12

1 In the Court of Claims.

WILL J. ALLEN,
v.
THE UNITED STATES. } No. 34,235.

I. *Petition.*

(Filed December 13, 1919.)

To the Honorable the Court of Claims:

The claimant, Will J. Allen, respectfully represents:

I. The claimant enlisted in the United States Revenue Cutter Service, the name of which has since been changed to United States Coast Guard, on September 18, 1913, serving successively as acting ship's writer, ship's writer, acting yeoman, and yeoman, in which last-named grade he received a permanent appointment January 13, 1917, and continued to serve as such until May 28, 1919, when he was honorably discharged from the service.

II. The duties of a yeoman in the Coast Guard are in all respects similar to and corresponding with those of a chief yeoman in the Navy.

III. The claimant since the 6th day of April, 1917, or since the date when the act hereinafter referred to became effective, has been entitled to receive down to the date of his discharge a rate of pay corresponding with and equal to that of a chief yeoman in the Navy.

IV. The Commandant of the Coast Guard on the 5th day of June, 1917, by letter officially addressed to the Chief of the Bureau of Navigation of the Navy Department, submitted a tabular
2 statement showing the several grades and ratings of warrant officers, petty officers, and enlisted men of the United States Coast Guard, and opposite thereto the several corresponding grades and ratings of the Navy, the tabulation being arranged on the basis of the duties and responsibilities of the several ratings.

In this statement a yeoman in the Coast Guard was set down as corresponding in duty to a chief yeoman in the Navy and entitled to the same pay.

In the table adopted by the Navy Department this and other recommendations were ignored and yeomen in the Coast Guard were ranked with yeomen first class in the Navy, thereby giving to all yeomen in the Coast Guard no benefit whatever of the Navy rates of pay, the rate of pay of a yeoman, first class, in the Navy being lower than that of a yeoman in the Coast Guard.

The same is true of the other petty officers of the Coast Guard who were rated as corresponding to petty officers in the Navy receiving lower rates of pay than themselves whereby no effect was given to the provisions of law hereinafter referred to for corresponding rates of pay of petty officers of the Coast Guard to those of corresponding grades or ratings in the Navy.

V. The base pay of a yeoman in the Coast Guard was prior to the 6th day of April, 1917, $60 a month. The base pay of a chief yeoman, holding a permanent appointment in the Navy, was prior to that date, and still is, $77, and to each of said rates of pay must be added the credits for previous service in the Coast Guard or Navy, continuous service pay on re-enlistment, and also from June 1, 1917, increase of pay in time of war and for six months thereafter.

3 VI. The claimant therefore claims pay at the rate allowed by law and regulations to a chief yeoman in the U. S. Navy, from April 6, 1917, to May 28, 1919, wherever higher than that allowed by law and regulations pertaining to the Coast Guard to a yeoman in said Coast Guard, less all payments previously made to him on a different theory of the law.

VII. This claim has not been presented to the accounting officers of the Treasury for the reason that the Comptroller of the Treasury on the 10th day of September, 1919, in a decision in the case of another petty officer held that he would not make an independent reexamination of the corresponding rates of pay between the Coast Guard and the Navy, whereby it became useless to present this claim.

VIII. This claim is based upon the act of May 22, 1917, sec. 15 (40 Stat. 87), providing "that during the continuance of the present war, warrant officers, petty officers, and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy."

Also that part of sec. 15 of said act which provides for an increase of $6 a month to all enlisted men in the Navy whose base pay is $45 or more a month.

Also sec. 13 of the same act (40 Stat. 87): "Nothing contained in this act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this act."

Also joint resolution of April 6, 1917 (40 Stat. 1), declaring a state of war with Germany.

4 No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided,

abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims six hundred dollars ($600).

KING & KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

Will J. Allen, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge, information, and belief.

WILL J. ALLEN.

Subscribed and sworn to before me this 13th day of December, 1919.

[SEAL.]

MAY LOU H. BYINGTON,
Notary Public.

II. *General traverse.*

(Filed Feb. 12, 1920.)

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

III. *Argument and submission of case.*

On April 18, 1921, this case was argued and submitted on merits by Mr. George A. King, for the plaintiff, and by Mr. John G. Ewing, for the defendant.

5 IV. *Findings of fact, conclusion of law, opinion of the court by Hay, J., and dissenting opinion by Graham, J. Entered May 16, 1921.*

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of fact.

I.

The plaintiff, Will J. Allen, enlisted as a ship's writer in the United States Coast Guard September 18, 1913, and reenlisted successively on expiration of each succeeding term of enlistment, September 18, 1914, 1915, and 1916. October 13, 1916, he was rated acting yeoman and January 13, 1917, yeoman. He reenlisted as yeoman September 18, 1917, and was September 13, 1918, honorably discharged for the convenience of the Government. September 14, 1918, he reenlisted as yeoman for the period of the war, not exceeding three

years, and May 29, 1919, was honorably discharged for the convenience of the Government.

II.

From April 6, 1917, date of declaration of war with Germany, and until the institution of this suit the clerical force of the Coast Guard consisted of ships' writers and yeomen, the yeomen being the higher.

Ship's writers must qualify as stenographers and typewriters before they were enlisted. The duty of a ship's writer was to perform all the clerical work on a ship so far as he was able. He was required to be familiar with making out requisitions, returns of property, pay rolls, and accounts of all kinds, as well as taking down the officers' letters in stenography and typewriting the same.

Ship's writers were generally promoted to the grade of yeoman on showing proper qualifications after a service of three years.

There were but few of the rating of yeoman prior to the declaration of war with Germany.

The plaintiff in this case was a skilled stenographer and typist when he enlisted and throughout his term of service he also possessed the other qualifications above stated.

6 III.

In the Navy there are yeoman, third, second, and first classes, and above them a grade known as chief yeomen.

The yeomen of the third and second classes perform simply minor clerical duties under the supervision of either a chief or a first-class yeoman. After they have reached the rating of first class their responsibilities are increased. The yeoman, first class, acts as the first assistant to the chief yeoman and relieves him of practically all the mechanical work.

Yeomen in the Coast Guard were required to be stenographers in addition to having all the other qualifications required for chief yeomen in the Navy.

The duties of yeomen in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy.

IV.

Shortly after the passage of the act of May 22, 1917, section 15 of which provides that petty officers, etc., of the Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy, the commandant of the Coast Guard submitted June 5, 1917, to the Chief of the Bureau of Navigation of the Navy Department a tabular statement showing the several grades and ratings of warrant officers, petty officers, and enlisted men of the Coast Guard, and stated opposite thereto the grades or ratings in the Navy to which the Coast Guard grades or ratings correspond. These tabular statements were ar-

ranged on the basis of the duties and responsibilities of the several ratings.

In this table a ship's writer was put down as corresponding to a yeoman, first class, in the Navy, and a yeoman in the Coast Guard to a chief yeoman in the Navy.

Thereafter the Secretary of the Navy, October 10, 1917, issued a general order giving the corresponding grades in which both ship's writers and yeomen in the Coast Guard are tabulated as corresponding to yeoman, first class, in the Navy. The tabular statement of corresponding ratings as submitted by the commandant of the Coast Guard was in many other respects changed by the Navy Department.

This action was followed by a circular letter from Coast Guard headquarters, dated January 3, 1918, carrying out the order of the Secretary of the Navy, and showing, among other things, the comparative rates of pay for petty officers of the Coast Guard and for those of the Navy to whom the Navy Department general order of October 10, 1917, aforesaid, had declared such petty officers to correspond.

According to this statement the pay of all petty officers and nearly all enlisted men in the Coast Guard was already higher than the pay in the Navy, thus giving to the petty officers of the Coast Guard no benefit of section 15 of the act of May 22, 1917.

7

V.

Under the act of May 18, 1920, section 8, providing that the grades and ratings of warrant officers, chief petty officers, petty officers, etc., in the Coast Guard shall be the same as in the Navy, etc., it was provided by an order issued from Coast Guard headquarters bearing the same date as the act:

"Petty officers and other enlisted persons are transferred as of ------ from the ratings they held under the old classification of ratings and are hereby permanently appointed to the ratings provided in the new classifications, as follows:

"Yeoman: With three years' total service or more as yeoman and ship's writer, to be chief yeoman.

"Yeoman: With less than three years' total service as yeoman and ship's writer, to be yeoman, first class.

"Ship's writers: With less than three years' total service, to be yeoman, first class."

VI.

The plaintiff during the time covered by this claim, which comes down to May 28, 1919, was paid at the rate of pay due at the old Coast Guard rates of pay to a yeoman in the Coast Guard, that pay being higher than that of a yeoman, first class, in the Navy, which was held by the Navy Department, as aforesaid, to be the corresponding rating.

If paid during the period from April 6, 1917, date of declaration of war, to May 28, 1919, as a chief yeoman in the Navy he would receive	$2,270.12
The total pay received by him during that period was	1,783.80
Difference	486.32
If paid from June 1, 1917, to May 28, 1919, as a chief yeoman in the Navy, he would receive	2,128.95
The total pay received by him during that period was	1,673.80
Difference	455.15

Conclusion of law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of four hundred and eighty-six dollars and thirty-two cents ($486.32).

Opinion.

Hay, Judge, delivered the opinion of the court:

The plaintiff brings this suit to recover the sum of $486.32, which he claims to be due him by virtue of the act of Congress approved May 22, 1917, 40 Stat. 84.

The plaintiff enlisted as a ship's writer in the United States Coast Guard on September 18, 1913, and on January 13, 1917, he was
8 rated as a yeoman in the Coast Guard, and was serving as such on April 6, 1917, when war with Germany was declared and on May 22, 1917, when the act above cited was passed. On September 14, 1918, he reenlisted in the Coast Guard as yeoman, and was honorably discharged on May 29, 1919.

The duties of yeoman in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy.

By the act of January 28, 1915, 38 Stat. 800, it was provided that in time of war the Coast Guard should operate as a part of the Navy, subject to the orders of the Secretary of the Navy.

Shortly after the passage of the act of May 22, 1917, the commandant of the Coast Guard submitted to the Navy Department a tabular statement showing the several grades and ratings of warrant officers, petty officers, and enlisted men of the Coast Guard, and stated opposite thereto the grades or ratings in the Navy to which the Coast Guard grades or ratings corresponded. These tabular statements were arranged on the basis of the duties and responsibilities of the several ratings. In this statement a yeoman in the Coast Guard was put down as corresponding to a chief yeoman in the Navy.

In the Navy there are yeomen of the first, second, and third class, but no yeomen. There are no chief yeomen in the Coast Guard, but there are chief yeomen in the Navy, and, as pointed out above, the duties of chief yeomen in the Navy corresponded in all respects to the duties of yeomen in the Coast Guard. On October 10, 1917, the Secretary of the Navy issued a general order which provided that a yeoman in the Coast Guard should correspond in rating with a yeoman, first class, in the Navy. The duties of a yeoman, first class, in the Navy do not correspond with the duties of a yeoman in the Coast Guard, his duties and responsibilities being of lesser character than those of yeoman in the Coast Guard. By virtue of the order of the Secretary of the Navy the plaintiff was paid as yeoman of the first class in the Navy, which pay was lower than the pay of a yeoman in the Coast Guard, but by another provision of the act of May 22, 1917, it was provided that nothing contained in the act shall operate to reduce the pay or allowances that would have been received by any person in the * * * Coast Guard except for the passage of the act (40 Stat. 87), and in that way the plaintiff continued to receive the pay of a yeoman in the Coast Guard, but by virtue of the order of the Secretary of the Navy the plaintiff was deprived of the benefit of the act of May 22, 1917, which he claims entitled him to receive the pay of chief yeoman in the Navy.

That part of the act of May 22, 1917, which relates to the pay of officers of the Coast Guard is as follows:

"That during the continuance of the present war, warrant officers, petty officers, and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy."

The object of Congress in passing the above law was to fix the pay of warrant officers, petty officers, and enlisted men of the Coast Guard during the continuance of the war with Germany, and to fix it so that these officers and enlisted men should receive the same pay as was prescribed for corresponding grades and ratings in the
9 Navy. The officers of the Coast Guard were to be placed on an equal footing with the officers of the Navy, and were to derive any benefits which might accrue to them by reason of the fact that they were discharging the same duties and were incurring the same responsibilities which naval officers of similar rank were discharging and incurring.

The question for determination is: Does the fact that a yeoman of the Coast Guard performs the same duties, incurs the same responsibilities, and possesses the same qualifications in the Coast Guard Service which a chief yeoman in the Navy performs, incurs and possesses, entitle a yeoman in the Coast Guard to receive under the statute above quoted the same pay as a chief yeoman in the Navy?

In arriving at the proper rate of pay must the court base its decision upon the correspondence of names in the two services, or

must it base its decision upon the correspondence of the duties and qualifications of the officers in the two services? It will be observed that there were no yeoman in the Navy and no chief yeoman in the Coast Guard, but the duties and qualifications of the two offices were identical. The question is not one of office, but is purely a question of pay.

This court and the Supreme Court of the United States have placed a construction upon the statutes dealing with questions of corresponding pay in the Army and Navy; and it has been held that not corresponding grades but that the corresponding duties performed and the corresponding qualifications possessed must be considered in deciding whether an officer was entitled to the pay claimed for performing similar duty in the Navy for which pay had been fixed in the Army. The act known as the Navy personnel act (30 Stat. 1007) provided that after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army. There were in the Navy certain ranks or grades which did not correspond in name with ranks or grades in the Army, and the court in determining what was the pay to which the officer in the Navy was entitled arrived at a conclusion by ascertaining the duties which were performed by the officers in the respective services. This court said: "It is not for the courts to add to or take from the act where the pay for a similar service rendered by a naval officer can be assimilated to that of an officer of corresponding rank in the Army." Crosley v. United States, 38 C. C. 82, 86. See also United States v. Crosley, 196 U. S. 327; Richardson v. United States, 38 C. C. 182; Plummer v. United States, 224 U. S. 137; United States v. Farenholt, 206 U. S. 226; United States v. Miller, 208 U. S. 32, 36.

The statute (act of May 22, 1917) was passed by Congress for the purpose of equalizing as far as possible the pay of officers of the Coast Guard with that of officers of the Navy. The act attempted to assimilate the pay, and the court in construing the act will, so far as conditions admit, put such a construction upon it as will carry out the intent of Congress. In the case at bar a Coast Guard officer renders similar service to that rendered by a naval officer, has the same duties to perform, and possesses the same qualifications; the pay of the Coast Guard officer can be assimilated to the pay of the officer of the Navy, and therefore we think that the plaintiff is entitled to receive the pay prescribed for chief yeoman in the Navy.

The defendant, however, contends that by virtue of the act of January 28, 1915, 38 Stat., 800, which provides that in time of war the Coast Guard Service shall be a part of the Navy, subject to the orders of the Secretary of the Navy, the Secretary of the Navy had the right to prescribe the grades and ratings of the Coast Guard Service, and that such grades and ratings prescribed by the Secretary must be taken as final by the court, and that the pay thus

fixed by the Secretary of the Navy can not be inquired into nor considered by the courts. Section 161, Revised Statutes, is relied upon by the defendant.

This court has repeatedly passed upon the effect of regulations of the executive departments. It has uniformly held that such regulations could only have the force and effect of law when they are not in contravention to existing law and when they are promulgated for the purpose of carrying into effect the law in respect to which they are promulgated.

The general purpose of the proviso under consideration was to establish uniformity in the pay of like officers in the Coast Guard and the Navy. It fixed the pay of those officers, and nowhere in the act of May 22, 1917, on in the act of January 28, 1915, is anything to be found which delegates to the Secretary of the Navy the right to fix the pay of these officers. By assuming to fix the pay of officers of the Coast Guard the Secretary undertakes to exercise legislative power by regulation, and in this case to defeat by his interpretation of the statute the purpose and intent of Congress, for the intent of Congress was to benefit the officers of the Coast Guard by giving them the pay of like officers in the Navy. This the regulation of the Secretary prevented. Glavey v. United States, 182 U. S. 595, 605; United States v. Symonds, 120 U. S. 46, 49; Illinois Central Railroad Co. v. United States, 52 C. C. 53, 57.

As to the time when the proviso fixing the pay of officers, etc., of the Coast Guard takes effect we are of opinion that it takes effect from the beginning of the war, April 6, 1917. The intent of Congress was to give these officers of the Coast Guard during the war the same pay as like officers in the Navy, and in order to carry out this purpose these officers must be paid from the beginning of the war.

For the foregoing reasons we are of opinion that the plaintiff is entitled to recover the sum of $486.32. It is so ordered.

Downey, Judge, and Booth, Judge, concur.

Campbell, Chief Justice, took no part in the decision in this case.

Graham, Judge, dissenting.

I am constrained to dissent from the opinion of the court in this case. As I see it, it involves a purely administrative question, properly and naturally within the decision of the Secretary of the Navy, and which Congress intended that he should decide.

That question is in this case whether the duties of a yeoman in the Coast Guard, which was a part of the Navy Department at the time,
corresponded with the duties of a chief yeoman in the Navy.
11 *The* Secretary of the Navy held that they did not, but corresponded with the duties of a yeoman, first class, and gave him that rating. The act did not automatically fix the pay. It made the pay dependent upon the decision of the preliminary question of the correspondence of duties, that is, ratings, between the petty officers in the Coast Guard and the petty officers in the Navy. It left this question open, to be decided by some person, or body. That Congress thought it was an administrative question is shown by the

fact that in the subsequent act of May 18, 1920, 41 Stat. 603, it apparently left this same question to be determined by the Secretary of the Treasury, under whose jurisdiction the Coast Guard was at that time and who prepared and issued General Order No. 43, which was necessary to carry the provision of the act into effect. At the time of the passage of the act here in question the country was at war, and under the statute creating it the Coast Guard was under the jurisdiction of the Navy Department. The Secretary of the Navy as well as the chief officer of the Coast Guard thought this was a question to be determined by the Secretary of the Navy, showing an executive construction of the act which is, at least, persuasive. It was, as I view it, an administrative act which Congress intended should be determined by the head of the department, under whose control the two branches of the service were, and who was responsible for the efficiency and discipline of each and both. The decision of the question was reposed in the Secretary of the Navy. It involved the exercise of discretion and judgment, which is not reviewable by this court.

In this case it will be seen that it was necessary for a court first to pass upon and find the fact that the duties of a yeoman in the Coast Guard corresponded with those of a chief yeoman in the Navy, and thereby overrule the order of the Secretary of the Navy and his executive construction of the act, before it could reach a decision of the case in favor of the plaintiff. The case of Crosley v. United States, 196 U. S., and the other cases cited in the opinion of the court I do not think are in point. No one of them involves the question of an administrative order of a department. The questions are interdepartmental and not intradepartmental, as in this case. They involve rulings of the accounting officers of the Government.

I am of the opinion that this court has no jurisdiction, and to assume jurisdiction would be an unwarranted interference with the functions of the executive branch of the Government and an attempt to regulate the internal affairs of a department, which is no part of the functions of the judiciary.

While the opinion of the court seems to assume that this act was passed only for the benefit of the officers of the Coast Guard, it is not an interpretation of the act with which I can agree. That it was not passed for the purpose of benefiting them as a body is conclusively shown by the ratings prepared by the Chief of the Coast Guard—whose view of the matter has been adopted by the court—by which rating the pay of 8 out of the 25 petty officers would have been raised and the greater portion of the other 17 lowered, and the latter were only saved from this loss of pay by the provision of the act that it should not operate to decrease compensation

Congress is presumed to have known and understood that this would be the effect of the act, and it must be construed in the light of this effect. It is to be borne in mind that, generally speaking, the pay of the officers of the Coast Guard before the passage of the act was relatively higher than for similar duties and work in the Navy. The portion of the act upon which the

decision is based is a proviso to a paragraph increasing the pay of certain petty officers and enlisted men in the Navy. Knowing that the Coast Guard was under the Navy Department, and in order to avoid the discrimination between the petty officers in it and those in the Navy performing relatively similar duties, this proviso was inserted to avoid dissatisfaction, which might affect efficiency and discipline, by providing for the equalization and uniform classification of the men in these two branches of the naval service. Its purpose was to secure uniform classification and was consequently a classification question. Being a classification question, it is peculiarly an administrative question with which the head of the Navy Department, of all persons, Congress knew would be the best qualified to deal. Undoubtedly he took this view of it in deciding it and thus gave the act an administrative contsruction which should be persuasive here. If Congress entrusted the decision to him, this court has no jurisdiction to overrule his judgment and discretion in the matter. Whether the Secretary decided the matter right is not for the decision of this court.

The opinion in this case is based upon the view that the Secretary of the Navy usurped his authority in deciding the question of fact here involved, and consequently that he had no authority to decide it. If he had no authority to decide it and issue the order fixing the rating of the men in these two branches of the service, and had not decided it, then the plaintiff could not have compelled him to decide it by mandamus proceedings. If he had not decided it, or had refused to decide it, the plaintiff's rating and consequent rate of pay would have remained undetermined. That is, the amount of his pay would not have been fixed, for the statute did not automatically fix it. It could not be fixed until the question was determined whether he should be rated as a chief yeoman or a yeoman of the first class in the Navy. It therefore appears that had the Secretary failed to enter the order fixing the rating and the plaintiff had come into this court and asked for action, he would have been asking this court to fix his pay by first deciding the question of what his rating should be. As stated, this court has no authority to fix the pay; that is a matter for Congress. Where Congress has fixed the amount of compensation this court can enforce its payment, but it has no power to fix compensation directly or indirectly. That is to say, where the compensation is dependent upon the decision of a fact aliunde the statute, this court by deciding that fact can not fix the compensation indirectly, which, as I view the case, is what the court is asked to do here.

If this conclusion, based upon the assumption that the Secretary of the Navy could not decide the question, be correct, then the act is inoperative because Congress failed to state, in terms, that the Secretary of the Navy should decide the question and determine the rating. This, I think, is a conclusion not justified. Rather than take this view of the matter I think that it should be concluded that as it was an administrative question Congress intended it to be decided by the Secretary of the Navy.

I am of the opinion that the petition should have been dismissed upon the ground that the court in no aspect of the matter had jurisdiction.

13 V. *Judgment of the court.*

At a Court of Claims held in the city of Washington on the sixteenth day of May, A. D., 1921, judgment was ordered to be entered, as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that Will J. Allen, as aforesaid, is entitled to recover, and shall have and recover of and from the United States the sum of four hundred and eighty-six dollars and thirty-two cents ($486.32).

BY THE COURT.

VI. *Proceedings after entry of judgment.*

On July 15, 1921, the defendant filed a motion for a new trial. Said motion was overruled by the court on October 10, 1921.

VII. *Defendant's application for and allowance of appeal to the Supreme Court.*

From the judgment rendered in the above-entitled cause on the 10th day of October, 1921, in favor of the claimant, the defendants, by their Attorney General, on the 21st day of November, 1921, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

Filed November 21, 1921.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

November 21, 1921.

14 Court of Claims.

WILL J. ALLEN,
vs.
THE UNITED STATES. } No. 34235.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law filed by the court; of the opinion of the court by Hay, J., and of the dissenting opinion by Graham, J.; of the judgment of the court; of the defendant's application for and

the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this twenty-sixth day of November, A. D. 1921.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

(Indorsement on cover:) File No. 28615. Court of Claims. Term No. 232. The United States, appellant, vs. Will J. Allen. Filed December 23d, 1921. File No. 28615.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1923

Supreme Court of the United States.

October Term, 1922

No. 232

THE UNITED STATES, *Appellant*,
v.
WILL J. ALLEN

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

GEORGE A. KING,
WILLIAM B. KING,
GEORGE R. SHIELDS,
Attorneys for Appellee.

TABLE OF CONTENTS.

	PAGE
I. Statement of the Case	1
Claim and Decision Thereon	7
The Facts Found	3
II. Brief of Argument	6
Pay of Corresponding Navy Grade	6
Authorities in this Court	7
Administrative Construction	10

LIST OF CASES.

Allen *v.* United States (this case), 56 C. Cls. 265	2
Converse *v.* United States, 26 C. Cls. 6, 10	12
International Railway Co. *v.* Davidson, 257 U.S. 506	11
Opins. Att. Gen., V. 32, p. 185	3
United States *v.* Crosley, 196 U. S. 327, 333, 334	7
United States *v.* Miller, 208 U. S. 32, 35, 36	8
United States *v.* Standard Brewery, 251 U. S. 210	11
United States *v.* Symonds, 120 U. S. 46	12
Waite *v.* Macy, 246 U. S. 606	11

Supreme Court of the United States.

October Term, 1922.

THE UNITED STATES,
Appellant,
v.
WILL J. ALLEN.
No. 232.

Appeal from the Court of Claims.

I. STATEMENT OF THE CASE.

CLAIM AND DECISION THEREON.

This is a claim made by the appellee, Will J. Allen, a Yeoman in the Coast Guard, for pay at the rate fixed by law for a Chief Yeoman in the Navy from April 6, 1917, to May 28, 1919, less pay already received by him at a lower rate. The claim is based upon the following provision of the act of May 22, 1917 (Chap. 20, 40 Stat. 84, 87): "An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes." Section 15." * * * That during the continuance of the present war, warrant officers, petty officers and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy."

Also Section 13: "Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that

would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act."

The Court of Claims found as a fact (Finding III, record, p. 4):

"The duties of yeomen in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy."

The Court of Claims decided that as the law intended to give corresponding pay for corresponding duties the claimant was entitled to the same rate of pay as a chief yeoman in the Navy.

Judgment was entered for the amount of difference of pay due on this basis in the sum of $486.32 (Finding VI, record, p. 6; opinion of the court, record, pp. 6, 9). The case is reported 56 C. Cls. 265. The United States appealed to this court (record, p. 12).

By the act of January 28, 1915 (Chap. 20, 38 Stat. 800, 801) it is provided that the Coast Guard "shall constitute a part of the military forces of the United States and which shall operate under the Treasury Department in time of peace and operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President shall so direct."

In accordance with the provisions of this act the Coast Guard by the declaration of war, April 6, 1917 (Joint Resolution, Chap. 1, 40 Stat. 1) came under the jurisdiction of the Secretary of the Navy and so remained until by Presidential order issued under authority of the Overman act, "An Act Authorizing the President to coordinate or consolidate executive bureaus, agencies, and offices, and for other purposes, in the interest of economy and the more efficient concentration of the

Government" (Chap. 78, 40 Stat. 556), it was retransferred to the Treasury Department, August 28, 1919 (32 Opinions, 185, paragraph 1).

The Facts Found.

The service of the claimant in the Coast Guard is stated in Finding I (record, pp. 3, 4). He enlisted as a ship's writer in 1913, but reached the higher grade of yeoman before the declaration of war and held that grade during the entire period covered by the claim. Ship's writer and yeoman constitute the clerical force of the Coast Guard, yeoman being the higher. Ships' writers were generally promoted to the grade of yeoman after showing proper qualifications after a service of three years. The claimant in this case was a skilled stenographer and typist when he enlisted and possessed all the qualifications of the rating of yeoman during his entire term. (Finding II, record, p. 4). In the Navy there are yeoman, third, second and first class, and above them a grade known as chief yeoman. Yeomen in the Coast Guard were required to be stenographers in addition to having all the other qualifications required for chief yeomen in the Navy. Their duties in all respects corresponded to those of chief yeoman in the Navy.

Shortly after the passage of the act of May 22, 1917, Sec. 15 of which provides that petty officers, etc., of the Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy, the Commandant of the Coast Guard submitted June 5, 1917, to the Chief of the Bureau of Navigation of the Navy Department a tabular statement showing the several grades and ratings of warrant officers, petty officers and enlisted men of the Coast Guard, and stated opposite

thereto the grades or ratings in the Navy to which the Coast Guard grades or ratings correspond. These tabular statements were arranged on the basis of the duties and responsibilities of the several ratings.

In this table a ship's writer was put down as corresponding to a yeoman, first class, in the Navy, and a yeoman in the Coast Guard to a chief yeoman in the Navy.

Thereafter the Secretary of the Navy, October 10, 1917, issued a general order giving the corresponding grades. Both ship's writers and yeomen in the Coast Guard are there tabulated as corresponding to yeoman, first class in the Navy. The tabular statement of corresponding ratings as submitted by the commandant of the Coast Guard was in many other respects changed by the Navy Department.

This action was followed by a circular letter from Coast Guard headquarters, dated January 3, 1918, carrying out the order of the Secretary of the Navy, and showing among other things, the comparative rates of pay for petty officers of the Coast Guard and for those of the Navy to whom the Navy Department general order of October 10, 1917, aforesaid, had declared such petty officers to correspond.

According to this statement the pay of all petty officers and nearly all enlisted men in the Coast Guard was already higher than the pay in the Navy, thus giving to the petty officers of the Coast Guard no benefit of section 15 of the act of May 22, 1917 (Finding IV, record, p. 5).

Reference is made in Finding V (record, p. 5) to the action taken under the act of May 18, 1920 (Chap. 190, 41 Stat. 601), "An Act To increase the efficiency of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic

Survey, and Public Health Service." By Section 8 of that act (41 Stat. 603) not only was the provision of the act of 1917 repeated and extended to the entire personnel of the Coast Guard, both commissioned and enlisted, but it was also provided:

"and the grades and ratings of warrant officers, chief petty officers, petty officers, and other enlisted persons in the Coast Guard shall be the same as in the Navy, in so far as the duties of the Coast Guard may require," etc.

Thus by that act not only was the pay assimilated but the duties of the officers were also made to correspond to those of the Navy. Under this statute both a ship's writer and yeoman in the Coast Guard with three years' total service as ship's writer and yeoman were to have the title and rating of chief yeoman (Finding V, record, p. 5).

The action taken under this act although subsequent to the period covered by this claim is found and referred to by the Court of Claims as showing that the Treasury Department under which the Coast Guard normally served and to which it had in 1919 been returned decided that the duties of a yeoman of more than three years' service in the Coast Guard were equivalent to those of a chief yeoman in the Navy.

In accordance with the general statement toward the end of Finding IV (record, middle p. 5) the claimant got no benefit of the act of May 22, 1917 (*ante*, p. 1) and received simply the rate of pay due at the lower Coast Guard rate to a yeoman in the Coast Guard, that pay being higher than that of a yeoman, first class in the Navy, which rating was held by the Navy Department to be the equivalent of a yeoman of the Coast Guard.

To avoid any possible reduction in pay it was provided by the act of May 22, 1917 (40 Stat. 87):

"Sec. 13. Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act."

II. BRIEF OF ARGUMENT.

Pay of Corresponding Navy Grade.

The opinion of the Court of Claims by Judge Hay (record, pp. 6–9) states the grounds of decision very fully and refers to many authorities in this court (record, pp. 8, 9).

The law provides that petty officers, etc., of the Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy. The Court of Claims found as a fact: "The duties of yeomen in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy" (Finding III, record, p. 4; *ante*, p. 3). It hence follows that a yeoman in the Coast Guard was entitled to the pay of a chief yeoman in the Navy.

This construction is greatly fortified by its subsequent adoption by the Treasury Department in carrying out the act of May 18, 1920 (Chap. 190, 41 Stat. 601). By Section 8 of that act (p. 603, *ante*, p. 5) not only pay, allowances and increases are to be the same for a petty officer, etc., of the Coast Guard, as those of corresponding grades or ratings and length of service in the Navy, but the grades and ratings themselves are to be the same as in the Navy.

The Secretary of the Treasury classified yeomen in the Coast Guard of more than three years' service as chief yeomen in the Coast Guard.

AUTHORITIES IN THIS COURT.

The case in this court most nearly approaching the present one in principle is *United States* v. *Crosley*, 196 U. S. 327. That case arose under the Navy Personnel act of March 3, 1899 (Chap. 413, 30 Stat. 1004), by Section 13 of which (p. 1007) it was provided:

"That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

The opinion of the court by Mr. Justice Day thus treated a similar contention as is made on behalf of the government in this case (pp. 333, 334):

"The contention of the Government is that, while the pay of naval officers is made to correspond with that of army officers of like rank, the naval officer assigned to duty as aid may not receive the $200 additional pay, as it is not pay on account of rank, but on account of service. But we think this is too narrow a construction of the terms of the act, in view of its intent and purpose. For while we may not add to or take from the terms of a statute, the main purpose of construction is to give effect to the legislative intent as expressed in the act under consideration. An aid to a rear admiral renders services similar to those rendered by an aid to a major general in the Army. The naval aids are appointed under paragraphs 343 and 345 of the Naval Regulations of 1895, which are:

"'Sec. 343. The chief of staff, flag lieutenant, clerk and aids shall constitute the personal staff of a flag officer.

"'Sec. 345. (1) A flag officer may select any officer of his command to serve as flag lieutenant or clerk, provided his grade accords with the rules laid down in Article 344. (2) He may also, when necessary, select other line officers junior to the flag lieutenant to serve

on his personal staff as aids, but shall not assign naval cadets to such duty.'

"They are selected for like service, and it is admitted that there would have been reason for a like express statutory provision in their favor as to compensation. The sum of $200 is allowed to an aid to a major general in addition to the regular pay of his rank. It is allowed as payment for the additional service imposed. Bearing in mind the purpose of the act to give the same compensation to corresponding officers of the Army and Navy, and that it is expressly provided that officers of the Navy shall receive the same pay and allowances, except for forage, as are or may be provided by law for officers of the Army of corresponding rank, we think it does no violence to, but rather carries out, the purpose of Congress to construe this section so as to give to an aid of a rear admiral, in addition to the regular pay of his rank, pay similar to that allowed an aid to a major general. We reach the conclusion that the Court of Claims was right in its allowance of this item."

This decision was extended in *United States* v. *Miller*, 208 U. S. 32, to a case in which the officer was not even called an aid to the rear admiral, but it was said that if he performed similar duties he was entitled under the assimilating provision of the act of 1899 to the same pay as the officer to whose compensation his own was assimilated. The court said in the opinion, also by Mr. Justice Day (pp. 35, 36):

"It is the contention of the counsel for the Government that this language clearly indicates that a flag lieutenant on the staff of a rear admiral, designated in paragraph 1, Sec. 345, is to be distinguished from aids junior to the flag lieutenant designated in paragraph 2 of the section. But we think it would be giving a too narrow interpretation of the purpose of Congress to give naval officers the same pay as officers of corresponding rank in the Army to construe this regulation to deny such pay to a flag lieutenant because he may not have been

technically designated as an aid. And taking the regulation literally, it does not necessarily follow that because the rear admiral may select a junior to the flag lieutenant to serve on his personal staff as aid, that the one designated as flag lieutenant or clerk might not also be regarded as an aid. Be this as it may, we think the statute should be construed so as to effect the purpose of Congress, and that a determination of who are aids should be arrived at by a consideration of the nature and character of the duties of the officers constituting the personal staff of a flag officer. Referring to the letter of the Secretary of the Navy embodied in the finding of facts we find:

"'As in the case of a general officer of the Army, these officers, including the flag lieutenant, are, in every acceptation of the word, aids for assisting the commander-in-chief in the performance of his duties. The number of officers thus assigned is limited only by the actual necessities of the case. In very large fleets, where the staff work is especially heavy, two or three so-called aids may be necessary in addition to the flag lieutenant and the secretary. They are all, from flag lieutenant to the lowest aid in point of rank, aids in every sense of the term to the flag officer. The senior aid of the flag officer is, in ninety-nine cases out of a hundred, chosen by the flag officer personally as a flag lieutenant. The term 'flag lieutenant' in itself by no means indicates all the duties which the officer so appointed performs. Different flag officers distribute their duties among the members of the personal staff in different ways. Some have charge of one thing, or set of things, another has charge of other things; but from time immemorial, in other naval services as well as our own, it has been customary to term the senior aid of the flag officer the 'flag lieutenant,' because from time immemorial also, that aid has been placed in charge, as one of his duties only, of the signal work of the fleet or squadron in which he may happen to be serving.

* * * * * * *

It will be seen from this that the flag lieutenant is in every respect the aid, peculiarly, of the flag officer, and

his duties, in comparison with those of an aid to a general officer, more nearly conform to those performed by a military aid than do those of any other officer on the personal staff of a flag officer.'

"In view of the character of the duties thus required of a flag lieutenant, who is to all intents an aid to the rear admiral, we are of opinion that the Court of Claims did not err in its decision on this branch of the case, that the claimant was entitled to the increased pay awarded to the aid of a major general, at the rate of $200 a year."

ADMINISTRATIVE CONSTRUCTION.

In the dissenting opinion of the Court of Claims by Judge Graham (Record, p. 9) the view is taken that the question involved was one of administration arising in the course of the business of the Navy Department and was therefore committed to the exclusive discretion of the Secretary of the Navy; and that he having decided that a yeoman in the Coast Guard corresponded only to a yeoman first class, in the Navy, that construction is decisive and precludes all independent inquiry.

The act of 1917 makes no change in either the titles or duties of these petty officers of the Coast Guard. They continued from and after the passage of that act to be called by the same names and to perform the same duties as they had performed previously to the passage of that act.

The question concerns pay and pay alone. There might be some reason for a ruling of this character if there had been a change in the official designation and ratings of these men as was done by the subsequent act of May 18, 1920 (Chap. 190, 41 Stat. 601, sec. 8, p. 603, *ante*, p. 5).

There is no ground for the application of the doctrine of the finality of administrative decision to the action

of the Secretary of the Navy on the question of pay of a yeoman of the Coast Guard. A decision of administrative authority is final only when it is made so, either by express statutory authority or by necessary deduction therefrom.

In *United States* v. *Standard Brewery*, 251 U. S. 210, this court said with reference to a contention as to the conclusiveness of an administrative determination (pp. 219, 220):

"Nothing in the act remits the determination of that question to the decision of the revenue officers of the Government. While entitled to respect, as such decisions are, they can not enlarge the meaning of a statute enacted by Congress. Administrative rulings can not add to the terms of an act of Congress and make conduct criminal which such laws leave untouched."

Moreover, the administrative decisions are conflicting. The Commandant of the Coast Guard ruled as is here contended and as found by the Court of Claims that yeomen of the Coast Guard correspond to chief yeomen in the Navy. That decision, it is true, was set aside by the Secretary of the Navy. Later in 1920, the Secretary of the Treasury decided that a yeoman of three years' standing in the Coast Guard corresponded to a chief yeoman in the Navy and gave that rank and designation to all the former yeomen in the Coast Guard of requisite length of service. The Court of Claims supports this conclusion by finding that the duties of yeomen in the Coast Guard in all respects correspond to those of chief yeomen in the Navy.

Waite v. *Macy*, 246 U. S. 606, and *International Railway Company* v. *Davidson*, 257 U. S. 506, hold that a regulation or order of an executive department must be consistent with the law.

In *United States* v. *Symonds*, 120 U. S. 46, a naval regulation was held void as conflicting with a statutory provision defining what should constitute shore duty as distinguished from sea duty.

The decision in the present case leaves unimpaired the power of the Secretary of the Navy or of the Secretary of the Treasury, under whose jurisdiction the Coast Guard now is, to appoint or remove within the limits of the law any officer or enlisted man in the Coast Guard or to direct his conduct in the service. It simply awards to the claimant that pay which under a true construction of the law is his due.

One finding of the Court of Claims can not be ignored in this direction (Finding IV, record, *ante*, p. 5):

"According to this statement the pay of all petty officers and nearly all enlisted men in the Coast Guard was already higher than the pay in the Navy, thus giving to the petty officers of the Coast Guard no benefit of section 15 of the act of May 22, 1917."

It is to be presumed that the intention of Congress in enacting Section 15 of the act of May 22, 1917 (Chap. 20, 40 Stat. 84, 87, *ante*, p. 1) was to give some benefit to these petty officers. The presumptions are therefore against a construction which resulted in giving them no benefit whatever.

In *Converse* v. *United States*, 26 C. Cls. 6, 10, this principle of statutory construction was stated:

"There are a number of rules for the interpretation of statutes, such as 'the will of the legislature must be gathered from the language of the act,' 'words must be taken in their ordinary signification,' and the like; but a fundamental principle underlying these rules is that an intelligent purpose shall be ascribed to the law-making

power, an intention to accomplish something by the enactment. Before the judiciary undertakes to discover what the legislature intended to do, it must concede that the legislative will intended to do something."

The judgment of the Court of Claims should be affirmed.

GEORGE A. KING,
WILLIAM B. KING,
GEORGE R. SHIELDS,
Attorneys for Appellee.

UNITED STATES *v.* ALLEN.

APPEAL FROM THE COURT OF CLAIMS.

No. 232. Argued March 1, 1923.—Decided March 12, 1923.

Under the Act of May 22, 1917, c. 20, 40 Stat. 84, providing that, during the War, warrant and petty officers and enlisted men of the Coast Guard should receive the same rates of pay as those prescribed for corresponding grades or ratings and length of service in the Navy, a yeoman of the Coast Guard, whose duties and qualifications in fact corresponded to those of a chief yeoman in the Navy, was entitled to the greater pay of the latter position, notwithstanding an order of the Secretary of the Navy making a different classification. P. 319.

56 Ct. Clms. 265, affirmed.

APPEAL from a judgment of the Court of Claims awarding a sum as additional pay to a yeoman of the Coast Guard.

Mr. Assistant to the Attorney General Seymour, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

Mr. George A. King, with whom *Mr. William B. King* and *Mr. George R. Shields* were on the brief, for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Action for $600.00 based on the claim of Allen, who was a yeoman in the Coast Guard, for pay at the rate fixed by law for a chief yeoman in the Navy from April 6, 1917,

to May 28, 1919, under the following provisions of the Act of May 22, 1917, c. 20, 40 Stat. 84: "An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes." Section 15: ". . . That during the continuance of the present war, warrant officers, petty officers and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy." Section 13: "Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act."

Judgment was rendered for $486.32, to review which this appeal is prosecuted.

The question presented is not the absolute rank of Allen but the correspondence of his duties and his emolument to those of chief yeoman in the Navy.

The Commandant of the Coast Guard submitted, June 5, 1917, to the Chief of the Bureau of Navigation of the Navy Department a tabular statement showing the several grades and ratings in the Navy to which the Coast Guard grades or ratings corresponded. This tabular statement was arranged on the basis of the duties and responsibilities of the several ratings.

In this table a ship's writer was put down as corresponding to a yeoman, first class, in the Navy, and a yeoman in the Coast Guard to a chief yeoman in the Navy. October 10, 1917, the Secretary of the Navy issued a general order giving the corresponding grades in which both ship's writers and yeomen in the Coast Guard were tabulated as corresponding to yeoman, first-class, in the Navy instead of chief yeoman in the Navy. The tabulated statement by the Commandant of the Coast Guard was in many other respects changed by the Navy Depart-

ment. The action of the Navy Department was carried out by a circular letter from the Coast Guard headquarters, and, according to it, pay of all petty officers and nearly all enlisted men in the Coast Guard was higher than the pay in the Navy, thus giving to such officers no benefit of § 15 of the Act of May 22, 1917.

Allen, during the time covered by his claim, was paid as a yeoman in the Coast Guard, $1,783.80; as chief yeoman in the Navy, he would have received $2,270.12, a difference of $486.32.

The finding of the court was that he was entitled to recover the sum of $486.32 more than that which he did receive, and it awarded him judgment for that amount, rejecting the contention of the Government that "the fact that Congress did not expressly provide what grades and ratings of the Coast Guard should be considered 'corresponding' to the grades and ratings in the Navy left that fact to be determined by the Secretary of the Navy."

The finding and judgment of the court are in accordance with a table of grades and ratings submitted by the Commandant of the Coast Guard, pursuant to § 15 of the Act of May 22, 1917, above referred to. To this table of ratings, and the action of the Commandant, the United States opposes the order of the Secretary of the Navy, No. 329, and maintains that it was the duty of the latter, under the Act of May 22, 1917, in order to standardize the pay of the Coast Guard and Navy, to determine what were the corresponding grades or ratings. "That preliminary question was required to be settled before any pay could be fixed or allowed." And further, "The Secretary of the Navy, acting in his administrative capacity, and within his discretionary powers, promulgated a table of grades and ratings under which the claimant [Allen] was paid."

To these contentions the court gave attentive and elaborate consideration, and determined that they were con-

trary to the purpose of the Act of May 22, 1917, fixing the pay of petty officers and enlisted men during the continuance of the war with Germany so that they should receive the same pay prescribed for corresponding grades and ratings in the Navy. It held that the test of correspondence or equality was the duties and responsibilities of yeomen in the Coast Guard and yeomen in the Navy. In other words, it was the judgment of the court, that, as the duties and qualifications of the officers were identical, their pay should be the same. Correspondence of duties is a question of fact, not a matter of deference to the judgment of the Secretary of the Navy.

The court said, " The statute (act of May 22, 1917) was passed by Congress for the purpose of equalizing as far as possible the pay of officers of the Coast Guard with that of officers of the Navy. The act attempted to assimilate the pay, and the court in construing the act will, so far as conditions admit, put such a construction upon it as will carry out the intent of Congress. In the case at bar a Coast Guard officer renders similar service to that rendered by a naval officer, has the same duties to perform, and possesses the same qualifications; the pay of the Coast Guard officer can be assimilated to the pay of the officer of the Navy, and therefore we think that the plaintiff is entitled to receive the pay prescribed for chief yeoman in the Navy."

The conclusion was that the purpose of the act was " to establish uniformity in the pay of like officers in the Coast Guard and the Navy," and that it could not be defeated by an administrative order of the Secretary of the Navy. Hence, the further conclusion was that Allen was entitled to recover the sum of $486.32 and it was so ordered.

We concur, and affirm the judgment.

Affirmed.